

28

June 14, 2021

Dana M. Miller #455056
Tonia Correctional Facility
1576 W. Bluewater Hwy.
Tonia, Michigan 48846

Civil Case No: 21-005047-CZ

United State District Court
For The Eastern District Of Michigan
Office Of The Clerk
231 West Lafayette Blvd Room 564

Detroit, Michigan 48226

Case: 3:21-cv-11496
Judge: Cleland, Robert H.
MJ: Patti, Anthony P.
Filed: 06-14-2021 At 02:46 PM
PRIS DANA MILLER V STATE OF MICHIGAN (SS

Dear Clerk,

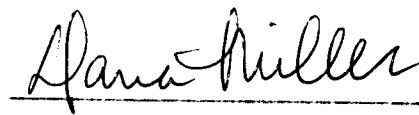
My name is Dana Maurice Miller #455056 and I would like to have my civil case that the state has filed against me (motion for order to show cause and order freezing assets)(pursuant to rule 11 of the federal rules of civil procedure) removed from the state court and held in the U.S. District Court for the Eastern District of Michigan for the following reasons.

On May 26, I was served by the state treasurer, ex parte order to show cause and order to freeze assets. My counselor Jeffrey Luther said the court papers came by e-mail. The money that the state is seeking is the stimulus money that was guaranteed to me by the federal government. Defendant knows that this money is subject to debt and collection from court orders that judges have already made such as, child support, court costs, restitution, but its not subject to a civil lawsuit. The state is suing me because the state says I have too much money in my account. (**over 1,500 dollars**) I caught Covid-19 in held and the money that was sent by the government was to help me. I know the government did not send that money to me for the state of file a civil lawsuit and take 90% of it. Under 28 USC subsection 1441-1455, I would like to have this civil action moved to a federal court. Defendant has not

POOR QUALITY ORIGINAL

responded to the show cause complaint but would like to present a compelling argument to show the court why the state treasurer shouldn't have my money.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana Miller", written over a horizontal line.

Dana M. Miller

Approved, SCAO

Original - Court
1st Copy- Defendant2nd Copy - Plaintiff
3rd Copy -ReturnSTATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
WAYNE COUNTY

SUMMONS

CASE NO.
21-005047-CZ
Hon. Edward Ewell, Jr.

Court address : 2 Woodward Ave., Detroit MI 48226

Court telephone no.: 313-224-5195

Plaintiff's name(s), address(es), and telephone no(s)
STATE TREASURER

v

Defendant's name(s), address(es), and telephone no(s).
MILLER #455056, DANA M

Plaintiff's attorney, bar no., address, and telephone no

Moshe Freedman 74224
3030 W Grand Blvd
Detroit, MI 48202-6030**Instructions:** Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.**Domestic Relations Case**

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ _____ Court,

where it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date
4/21/2021Expiration date*
7/21/2021Court clerk
Laverne Chapman

Cathy M. Garrett- Wayne County Clerk.

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

MC 01 (9/19)

SUMMONS

MCR 1.109(D), MCR 2.102(B), MCR 2.103, MCR 2.104, MCR 2.105



STATE OF MICHIGAN
CIRCUIT COURT FOR THE 3rd JUDICIAL CIRCUIT
WAYNE COUNTY

STATE TREASURER,

Plaintiff,

Case No. 21-005047 -CZ

v

Hon. Edward Ewell, Jr.

DANA MAURICE MILLER, #455056,

Defendant.

Moe Freedman (P74224)
Attorney for Plaintiff State Treasurer
Michigan Dept. of Attorney General
Collections Division
Cadillac Place
3030 W. Grand Blvd., Ste. 10-200
Detroit, MI 48202
(313) 456-0140
(313) 456-0141-Fax

Dana Maurice Miller, #455056
Defendant
Ionia Correctional Facility
1576 W. Bluewater Highway
Ionia, MI 48846

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

COMPLAINT

Plaintiff State Treasurer, through her attorneys, Dana Nessel, Michigan Attorney General and Moe Freedman, Assistant Attorney General, states for her Complaint:

JURISDICTION AND VENUE

1. The State Treasurer brings this action pursuant to the State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401 *et seq.*, which

secures reimbursement to the State for a prisoner's cost of care during incarceration.

2. On January 24, 2013, the Wayne County Circuit Court sentenced Defendant Dana Maurice Miller to the continuing jurisdiction of the Michigan Department of Corrections. His earliest release date is life, and his maximum release date is life.

3. The State has good cause to believe that Prisoner Miller has assets that can be used to reimburse the State for his cost of care, and the State seeks 90% of those assets as reimbursement pursuant to MCL 800.403(3).

4. MCL 800.404(1) grants the circuit court exclusive jurisdiction over all proceedings under the SCFRA and lays proper venue in the sentencing court.

PARTIES

5. Plaintiff is the head of the Michigan Department of Treasury with responsibility for the collection of monies, claims and accounts due to the State of Michigan or any State department or agency. MCL 205.1, *et seq.*

6. Prisoner Miller is currently housed in a State correctional facility and assigned prisoner number # 455056.

7. The Michigan Department of Corrections is a department of the State of Michigan and is an interested entity in this case as it holds assets belonging to Prisoner Miller.

8. The warden of the correctional facility in which Prisoner Miller is confined is an interested person in this case because the warden controls Miller's prison account.

GENERAL ALLEGATIONS

9. The State of Michigan has expended and will continue to expend a sum of money for the cost of Prisoner Miller's care during the entire period he is confined in a State correctional facility. An affidavit establishing his cost of care will be filed with the Court prior to the show cause hearing. MCL 800.406(2).

10. The SCFRA permits the Attorney General to use any remedy, interim order, or enforcement procedure allowed by law or court rule to secure reimbursement. This *includes an ex parte restraining order* to prevent the prisoner or a third party in possession of the prisoner's assets from disposing of those assets pending a show cause hearing. MCL 800.404a(1). See also *State Treasurer v Turner*, 110 Mich App 228, 231-232 (1981).

11. The State will suffer immediate and irreparable injury, loss, or damage unless the Court orders a restraint, or freeze, over Prisoner Miller's assets to prevent the transfer or disposition of the assets pending the outcome of this case.

12. The State asserts that a freeze is necessary to preserve Prisoner Miller's assets because SCFRA is an *in rem* action and the State will have no legal remedy for reimbursement other than the assets that are the subject matter of this suit.

13. The State is unaware of any other assets belonging to or possessed by Prisoner Miller, other than those stated below.

14. Pursuant to MCL 800.403a, Prisoner Miller must provide a full and complete accounting of all his assets including, but not limited to, financial account locations, balances, and account numbers, as well as addresses, legal descriptions and valuations of any real estate holdings.

Asset 1 – Prison Account

15. Upon information and belief, Prisoner Miller has an asset, as defined by MCL 800.401a(a), in the form of a prison account in the amount of approximately \$2,300.00. Pursuant to the American Rescue Plan Act, 2021, Prisoner Miller may also be due another payment that is subject to SCFRA.

16. Prisoner Miller's account may currently contain or may receive a stimulus payment under the Consolidated Appropriations Act, 2021 (CAA), which is exempt from attachment and is not being sought in this action. If the CAA payment is included in a tax refund from the IRS, it is likewise not being sought in this action.

17. The warden is a fit and proper person to place a freeze over any disbursements from the prison account during the pendency of this action and until further order of this Court, with the exception that any funds received by the prisoner under the CAA be exempt from any freeze put in place by this action.

RELIEF

Plaintiff State Treasurer respectfully requests that this Court enter a final order awarding the State 90% of Defendant Dana Maurice Miller's assets as partial reimbursement for his cost of care pursuant to MCL 800.403(3).

Respectfully submitted,

Dana Nessel
Michigan Attorney General

/s/ Moe Freedman
Moe Freedman (P74224)
Assistant Attorney General
Attorneys for State Treasurer
Cadillac Place
3030 W. Grand Blvd., Ste. 10-200
Detroit, MI 48202
(313) 456-0141
FreedmanM1@Michigan.gov

Dated: April 21, 2021

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 3rd JUDICIAL CIRCUIT
WAYNE COUNTY

STATE TREASURER,

Plaintiff,

Case No. 21-005047 -CZ

v

Hon. Edward Ewell, Jr.

DANA MAURICE MILLER, #455056,

Defendant.

Moe Freedman (P74224)
Attorney for Plaintiff State Treasurer
Michigan Dept. of Attorney General
Collections Division
Cadillac Place
3030 W. Grand Blvd., Ste. 10-200
Detroit, MI 48202
(313) 456-0140
(313) 456-0141-Fax

Dana Maurice Miller, #455056
Defendant
Ionia Correctional Facility
1576 W. Bluewater Highway
Ionia, MI 48846

***EX PARTE* MOTION FOR ORDER TO SHOW CAUSE AND
ORDER FREEZING ASSETS**

Plaintiff State Treasurer, through her attorneys, Dana Nessel, Michigan Attorney General and Moe Freedman, Assistant Attorney General, in support of her Motion states the following:

1. The State Treasurer filed this case pursuant to the State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401, *et seq.*, seeking

reimbursement from Defendant Prisoner Miller's assets for his cost of care. (See Complaint, hereby incorporated by reference.)

Order to Show Cause

2. MCL 800.404(2) requires that when a SCFRA complaint is filed, the Court *shall* issue an order directing a prisoner to show cause why 90% of the prisoner's assets should not be appropriated and applied towards reimbursing the State for his cost of care.

3. Further, MCL 800.403a(1) provides that "[a] prisoner shall fully cooperate with the State by providing complete financial information for purposes under SCFRA."

4. Prisoner Miller should be ordered to provide a full and complete accounting of all his assets including, but not limited to, financial account locations, balances, and account numbers, as well as addresses, legal descriptions and valuations of any real estate holdings, and to provide the accounting to this Court and to the Plaintiff's attorney, *no less than two weeks before the date of the show cause hearing.*

Order Freezing Asset

5. The SCFRA permits the Attorney General to use any remedy, interim order, or enforcement procedure allowed by law or court rule to secure reimbursement for a prisoner's cost of care. *This includes an ex parte restraining order* to restrain the prisoner or a third party in possession of the prisoner's assets

from disposing of those assets pending a show cause hearing. MCL 800.404a(1).

See also *State Treasurer v Turner*, 110 Mich App 228, 231-232 (1981).

6. The State asserts that a freeze is necessary to preserve Prisoner Miller's assets because SCFRA is an *in rem* action and the State will have no legal recourse or remedy other than the assets that are the subject matter of this suit.

7. The State will suffer immediate and irreparable injury, loss, or damage if the Court does not preserve Prisoner Miller's assets. Plaintiff's extensive experience with prisoners shows that they rarely have assets to reimburse the State for their cost of care, and the prisoners will generally move assets beyond the Court's reach upon notice of suit.

8. The State has information and believes that Prisoner Miller has the following assets, as defined by MCL 800.401a(a), which are subject to the State Treasurer's claim for reimbursement.

9. Asset 1 - Prison Account. The warden of the correctional facility where Prisoner Miller is confined is a fit and proper person to place a freeze over the prison account pending further order of this Court. The State Treasurer agrees that any stimulus funds received by Prisoner Miller under the Consolidated Appropriations Act, 2021 (CAA) are exempt from any freeze ordered by this Court. If the CAA payment is included in a tax refund from the IRS, it is likewise not being sought in this action. The warden shall allow deposits into the prison account.

RELIEF

Plaintiff State Treasurer respectfully requests that this Court enter an *ex parte* order to show cause and to freeze assets as follows:

Order to Show Cause

- (a) Directing Prisoner Miller to show cause why 90% of his assets should not be appropriated and applied towards reimbursing the State for his cost of care;
- (b) Directing Prisoner Miller to provide this Court and the Plaintiff's attorney with a complete accounting of all his assets including, but not limited to, financial account locations, balances, and account numbers, as well as addresses, legal descriptions and valuations of any real estate holdings as required by MCL 800.403a. Prisoner Miller should be ordered to provide the accounting *no less than two weeks before the date of the show cause hearing*;

Order Freezing Asset

- (c) Asset 1 – Prison Account. Directing the warden of the State correctional facility where Dana Maurice Miller, # 455056, is confined to place a freeze over his prison account, pending further order of this Court, except that any funds received by Prisoner Miller under the CAA, even in the form of a refund from the IRS is not being sought. The warden shall allow deposits into the prison account.

Respectfully submitted,

Dana Nessel
Michigan Attorney General

/s/ Moe Freedman

Moe Freedman (P74224)
Attorneys for State Treasurer
Assistant Attorney General
Cadillac Place
3030 West Grand Blvd., Suite 10-200
Detroit, MI 48202
(313) 456-0141
FreedmanM1@Michigan.gov

Dated: April 21, 2021

AFFIDAVIT

STATE OF MICHIGAN)

) ss

COUNTY OF WAYNE)

Moe Freedman, being duly sworn, deposes and says that the foregoing is true to the best of his knowledge, information and belief.

/s/ Moe Freedman

Moe Freedman (P74224)
Assistant Attorney General

Subscribed and sworn to before
me on April 21, 2021

/s/ Sabrina H. Lowe

Sabrina H. Lowe, Notary Public
Wayne County, Michigan
My commission expires: October 26, 2026

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 3rd JUDICIAL CIRCUIT
WAYNE COUNTY

STATE TREASURER,

Plaintiff,

Case No. 21-005047 -CZ

v

Hon. Edward Ewell, Jr.

DANA MAURICE MILLER, #455056,

Defendant.

Moe Freedman (P74224)
Attorney for Plaintiff State Treasurer
Michigan Dept. of Attorney General
Collections Division
Cadillac Place
3030 W. Grand Blvd., Ste. 10-200
Detroit, MI 48202
(313) 456-0140
(313) 456-0141-Fax

Dana Maurice Miller, #455056
Defendant
Ionia Correctional Facility
1576 W. Bluewater Highway
Ionia, MI 48846

**BRIEF IN SUPPORT OF *EX PARTE* MOTION FOR ORDER TO
SHOW CAUSE AND TO FREEZE ASSETS**

Plaintiff State Treasurer, through her attorneys, Dana Nessel, Michigan Attorney General and Moe Freedman, Assistant Attorney General, supports her motion as follows:

The State Treasurer is the head of the Michigan Department of Treasury with responsibility for the collection of monies, claims and accounts due to the State

of Michigan and all departments or agencies. MCL 205.1, *et seq.* The Michigan Department of Corrections is a department of the State of Michigan.

Defendant Dana Maurice Miller, #455056, is a state prisoner currently housed at a State of Michigan correctional facility and is subject to the continuing jurisdiction of the Michigan Department of Corrections, having been sentenced to its jurisdiction by the Wayne County Circuit Court on January 24, 2013, to a term of life. The State of Michigan has expended a sum of money for Prisoner Miller's care and will continue to expend the same during the entire period of his confinement in a state correctional facility.

This action was commenced to secure reimbursement from Prisoner Miller's assets for his cost of incarceration, pursuant to the State Correctional Facility Reimbursement Act (SCFRA). MCL 800.401, *et seq.* Upon information and belief, Prisoner Miller has assets as defined by MCL 800.401a(a), which have been identified as follows: prison account with an approximate balance of \$2,300.00.

Order to Show Cause

The SCFRA grants the circuit court for the county from which a prisoner was sentenced exclusive jurisdiction over all SCFRA proceedings. MCL 800.404(1). Further, the SCFRA provides that "[u]pon filing of the complaint . . . the court shall issue an order to show cause why the prayer of the complainant should not be granted." MCL 800.404(2). Since Prisoner Miller was convicted and sentenced in the Wayne County Circuit Court, this Court has jurisdiction, and accordingly, is

required to issue an order to show cause why Prisoner Miller's assets should not be appropriated under the SCFRA.

Furthermore, the SCFRA requires a prisoner to provide the State with a complete accounting of all his assets. MCL 800.403a. Prisoner Miller must comply with the SCFRA requirement.

Order Freezing Asset

This Court has general jurisdiction to issue *ex parte* orders regarding any matter within its jurisdiction, and it has specific jurisdiction to issue *ex parte* orders in SCFRA proceedings. MCL 800.404a(1) provides that when seeking to secure reimbursement under the Act, the Attorney General may use any remedy or court rule including an *ex parte restraining order* to restrain the prisoner or any other person or legal entity in possession, or having custody of the prisoner's assets, from disposing of the assets pending a hearing on an order to show cause why the assets should not be applied to reimburse the state as provided for under the SCFRA.

The Michigan Court of Appeals has held that the use of an *ex parte* restraining order pursuant to the SCFRA is justified as furthering an important governmental interest, clearly expressed by the Legislature, to prevent the prisoner from disposing of his property pending a hearing to determine if he has property which ought to be subject to the claim of the state. *Treasury Dep't v Turner*, 110 Mich App 228, 234 (1981) (rejecting the prisoner's argument that an *ex parte* restraining order would be equivalent to the issuance of a prejudgment garnishment).

The State asserts that a freeze on Prisoner Miller's prison account is necessary to preserve these assets. The State Treasurer believes that she will suffer immediate and irreparable injury or loss unless this Court orders a freeze of Prisoner Miller's assets. The State and this attorney have extensive experience with prisoners in state correctional facilities, which has shown that prisoners rarely have assets to reimburse the State for their cost of incarceration, and that such assets have generally been removed beyond the reach of the State upon notice of suit. The State Treasurer has no legal remedy absent the placement of a freeze to prevent Prisoner Miller from transferring assets, or from preventing him from disposing of these assets, pending the outcome of this action.

The freeze requested by the State Treasurer would exempt any stimulus payments received under the Consolidated Appropriations Act, 2021 (CAA), which are exempt from attachment. The freeze would also exempt \$600 paid pursuant to the CAA in the form of a tax refund from the IRS.

Plaintiff State Treasurer respectfully requests that this Court grant her motion and enter the attached proposed *Ex Parte Order to Show Cause and Order Freezing Assets*, pending further order of this Court.

Respectfully submitted,

Dana Nessel
Michigan Attorney General

/s/ Moe Freedman

Moe Freedman (P74224)
Attorneys for State Treasurer
Assistant Attorney General
Cadillac Place
3030 West Grand Blvd., Suite 10-200
Detroit, MI 48202
(313) 456-0140
FreedmanM1@Michigan.gov

Dated: April 21, 2021

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 3rd JUDICIAL CIRCUIT
WAYNE COUNTY

STATE TREASURER,

Plaintiff,

Case No. 21-005047 -CZ

v

Hon. Edward Ewell, Jr.

DANA MAURICE MILLER, #455056,

Defendant.

Moe Freedman (P74224)
Attorney for Plaintiff State Treasurer
Michigan Dept. of Attorney General
Collections Division
Cadillac Place
3030 W. Grand Blvd., Ste. 10-200
Detroit, MI 48202
(313) 456-0140
(313) 456-0141-Fax

Dana Maurice Miller, #455056
Defendant
Ionia Correctional Facility
1576 W. Bluewater Highway
Ionia, MI 48846

**EX PARTE ORDER TO SHOW CAUSE AND
TO FREEZE ASSETS**

At a session of said Court, held in the City of Detroit,
Wayne County, Michigan on May 20, 2021.

PRESENT: Hon. Edward Ewell
Wayne County Circuit Court

Plaintiff State Treasurer, having requested an *Ex Parte Order to Show Cause*
and *Ex Parte Order to Freeze Assets*:

IT IS ORDERED:

Order to Show Cause

1. Defendant Dana Maurice Miller, #455056, may appear on *Friday, August 6, 2021, at 10:00 a.m. before the Honorable Edward Ewell, Jr.*, Wayne County Circuit Court and show cause why an order should not be entered appropriating his assets to reimburse the State of Michigan for his cost of care in a state correctional facility.

2. This Order shall be served on Prisoner Miller at least 30 days prior to the show cause hearing. MCL 800.404(2).

3. If Prisoner Miller objects to the State's claim for reimbursement, then he must provide this Court and the Plaintiff's attorney with a written response explaining the reasons for the objection before the date of the hearing. If Prisoner Miller is not represented by counsel, then his response does not need to comply with the Michigan Court Rules for responsive pleadings. If Prisoner Miller wants to participate in the Court hearing, he must notify the Court so that it can make arrangements that it deems appropriate (including, but not limited to, a hearing on pleadings alone, appearances at the hearing by telephone or video conference, or the execution of a writ to require the prisoner's presence in person).

4. If, at the show cause hearing, the Court finds that Prisoner Miller has not filed a response to the Complaint or otherwise objected to the State's claim for reimbursement, or if he filed a response and the Court finds the response does not show good cause, then the Court may issue a final order awarding the State 90% of Prisoner Miller's assets.

5. Prisoner Miller must provide the Plaintiff's attorney with a full and complete accounting of all assets including, but not limited to, financial account locations, balances, and account numbers, as well as addresses, legal descriptions and valuations of any real estate holdings. Further, Prisoner Miller must provide the accounting *no less than two weeks before the date of the show cause hearing.*

IT IS FURTHER ORDERED:

Order Freezing Asset

6. Asset 1 – Prison Account. The warden of the state correctional facility where Dana Maurice Miller, #455056 is confined shall place a freeze over the prison account, *with the exception that any funds received by Prisoner Miller under the Consolidated Appropriations Act, 2021 (CAA), even if included in a tax refund, be exempt from any freeze or award ordered in this action.* The warden shall allow deposits into the prison account.

Date: 5/20/2021

/s/ Edward Ewell
Hon. Edward Ewell
Wayne County Circuit Court

DA
IONIA CORRECTIONAL FARM
1576 W BLUEWATER HWY
IONIA MI 48846



U S MARSH

6-1421

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
OFFICE OF THE CLERK

THEODORE LEVIN UNITED STATES
COURTHOUSE
231 WEST LAFAYETTE BLVD Room 564
DETROIT Mich 48226

Reinova

RECEIVED
JUN 24 2021

CLERK'S OFFICE
DETROIT